

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

LODI UNIFIED SCHOOL DISTRICT,

Employer,

and

LODI INFORMATION SERVICES
ASSOCIATION,

Petitioner,

and

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION & ITS CHAPTER 77,

Exclusive Representative.

Case No. SA-SV-151-E

PERB Decision No. 1429

April 30, 2001

Appearances: Kathy O'Connor, Representative, for Lodi Information Services Association; California School Employees Association by Maureen C. Whelan, Attorney, for California School Employees Association and its Chapter 77.

Before Amador, Baker and Whitehead, Members.

DECISION

BAKER, Member: This case is before the Public Employment Relations Board (Board) on exceptions by the Lodi Information Services Association (LISA) to a Board agent's proposed decision (attached) denying its severance petition. The Board agent found that the unit proposed by the severance petition had not been shown to possess a separate and distinct

community of interest necessary to find it an appropriate unit under the Educational Employment Relations Act (EERA) section 3545(a).¹

After a review of the entire record, including the Board agent's proposed decision, LISA's appeal and the response of the California School Employees Association and its Chapter 77, the Board hereby affirms the proposed decision and adopts it as the decision of the Board itself.

ORDER

The severance request in Case No. SA-SV-151-E is hereby DENIED.

Members Amador and Whitehead joined in this Decision.

¹ EERA is codified at Government Code section 3540 et seq. Section 3545 (a) states:

(a) In each case where the appropriateness of the unit is an issue, the board shall decide the question on the basis of the community of interest between and among the employees and their established practices including, among other things, the extent to which such employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district.



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REPRESENTATION
CASE NO. SA-SV-151-E

PROPOSED DECISION
(11/6/2000)

Appearances: Pinnell & Kingsley, by Kim Kingsley Bogard, Attorney, for Lodi Unified School District; Kathy O'Connor, Representative, for Lodi Information Services Association; and Burton Gray, Labor Relations Representative, for California School Employees Association and its Lodi Chapter 77.

Before Les Chisholm, Regional Director.

PROCEDURAL HISTORY

On March 15, 2000, the Lodi Information Services Association (LISA or Petitioner) filed a severance request with the Lodi Unified School District (District) and Public Employment Relations Board (PERB or Board) seeking to establish a separate unit of employees who work directly with and are responsible for the design, integration, implementation, and support of information systems utilized by the District. The employees covered by the severance request are included in a wall-to-wall classified unit represented by California School Employees Association and its Chapter 77 (CSEA).

CSEA filed a response opposing the severance request on March 23, 2000. That response made various substantive arguments in opposition to the petition. CSEA also filed, by letter dated April 11, 2000, a request that the petition be dismissed due to alleged improper filing and service.

By letter dated April 4, 2000, the District submitted a statement in support of the severance request.

On April 12, 2000, PERB issued a determination that the severance request had been timely filed with adequate proof of support. That determination letter also noted that the employer could not grant voluntary recognition to the Petitioner, under PERB's regulations,¹ due to the expressed opposition of CSEA.

A formal hearing was held on June 26, 2000. Briefs were filed by all parties, and the case was submitted for decision on September 6, 2000.

FINDINGS OF FACT

The District operates approximately 40 school sites and has an average daily attendance of about 26,000 students. CSEA has been the exclusive representative of a wall-to-wall unit of the District's classified employees, currently numbering more than 1,000, since June 1976.

The proposed unit currently includes 15 employees in 4 classifications: personal computer support technician, micro-computer technician, network technician, and systems analyst/computer operator. These classifications are all part of the District's Information Services Department (ISD). The ISD was first established in 1994, with just one employee. District projections are that employment in these classifications will grow to a total of 50-plus positions by the year 2005. District uses of computers include payroll, accounting, email,

¹ PERB's regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

phone service, Internet access, and student and employee records. One of the District's goals is to "expand the use of technology as a tool to enhance education and to support learning and assessment in all curriculum areas." (Petitioner Exhibit 3.)

Job Duties

ISD employees generally perform duties related to installation, maintenance and repair of computers and other electronic equipment; installation and maintenance of centralized computer systems and networks, programs and software; analyzing changes required in existing systems; training of users; and providing technical support and assistance. While many of their job duties are intellectual in nature, each of the classifications calls on employees to utilize dexterity of hands and fingers, and to lift, carry, push or pull moderately heavy equipment. Some employees use specialized testing equipment, as do employees in certain other classifications in the District.

ISD employees have access to confidential information, such as email accounts, passwords, and employee and student records.² A number of other District classifications and employees also deal with confidential records such as student, employee and medical information. ISD employees have access to all District facilities.

Education and Training

Each of the ISD employee classifications requires possession of a high school diploma and, depending of the classification, either college level work in computer science or a related field or completion of a basic electronic school or apprentice program, plus related experience.

² The parties stipulated that the term "confidential" as used in referring to job duties or functions of ISD employees does not refer to duties that would bring the employees within the definition of "confidential employee" set forth in section 3540.1(c) of the Educational Employment Relations Act (EERA). The EERA is codified at Government Code section 3540 et seq. Unless otherwise noted, all section references are to the Government Code.

Most, if not all, District classified positions require at least a high school diploma or equivalent, and certain classifications, including construction project facilitators and student attendance advisors, require college level education or other advanced training as well. The ISD positions further require on-going education and training to keep pace with advances in the technology. The micro-computer technician is required to have Apple hardware certification or an A+ certificate.³ Other District classifications requiring a special certification are the licensed vocational nurse, pool maintenance worker, and groundskeeper.

Wages, Hours and Working Conditions

ISD employees report to work at the main administration building, but some employees perform most of their work at school sites. Similarly, employees in Health Services, Child Welfare and Attendance, and certain other departments are itinerant workers. The ISD offices are in a secure area of the administration building and certain systems are maintained in a secure, quarantined area. The secured area has an alarm lock and is generally inaccessible to non-ISD employees, except that custodial staff of the District have access to perform their cleaning duties. ISD employees do not wear uniforms.

They are paid on the salary schedule provided for in the written agreement between CSEA and the District, receive time and one-half for overtime, receive the same benefits as do other CSEA-represented employees, and are subject to the same layoff/seniority procedures.

ISD employee classifications are at the higher end of the salary schedule. Despite this fact, the department has experienced about a one-third turnover rate over the past three years, including two recent departures of persons in entry-level positions who were offered more money elsewhere.

³ "A+ certification" refers to an industry standard in the area of computer maintenance.

More than one employee in the proposed unit transferred from another, non-ISD classification,⁴ but no such internal transfers have occurred in the past 18 months. Elliott Grauman, the District's director of classified personnel, testified that, while there have continued to be in-District applicants for open ISD positions, the District has been able to find outside applicants who better met the needs of the department.

ISD employees work shifts that allow for coverage of responsibilities between 7:00 a.m. and 5:00 p.m. but frequently have job-related demands, including system maintenance and payroll runs, that require their attendance outside these hours. One personal computer support technician regularly works from 1:00 to 9:30 p.m. Mr. Grauman, as well as LISA witnesses, testified that current contract language regarding notice required for shift changes creates difficulties in flexing schedules to meet work demands without incurring overtime costs. When the District proposed changes in this area regarding the Maintenance and Operations Department, CSEA expressed a preference for overtime compensation over making it easier to create flex time. However, neither the District nor CSEA has offered proposals in this regard that are specific to the ISD.

All ISD positions are full time. ISD employees work year round, as do a large number of other classified employees.

The classification description for all but the micro-computer technician requires that the employee be able to work independently with little direction. However, ISD projects often require employees to work cooperatively in teams.

⁴ Susan Martin, now a systems analyst/computer operator, formerly held positions as an Instructional Materials Center clerk and as an instructional assistant in the computer lab at the Career Center. Mary Hooley, now a personal computer support technician, was previously an instructional assistant in the computer lab.

Supervision

Most ISD employees report either to the network supervisor or the systems/operations supervisor, both of whom report to the director of Information Services. The director in turn reports to the assistant superintendent for business services.

Other ISD employees report to an instructional technology coordinator who reports to an administrative director who reports to the associate superintendent for K-12 Schools and Educational Services.

Interaction with Other Employees

ISD employees come in more frequent contact with one another than with other District personnel. However, the ISD employees' duties involve contact with other District employees both in person and by telephone and/or email. For example, the employees have regular contact with employees in the Maintenance and Operations Department, including the electricians who do the wiring for computer system installations. Other departments frequently contact ISD for information and/or assistance with their computers. One function of ISD is to propose solutions to employees that affect how employees perform their job duties. For example, the system analysts may help a department design a specialized report that requires reformatting data. In one case, ISD employees worked with employees in the Personnel Department on a system to track employee absences by combining data from several computers into one database. The personnel employees with whom ISD worked included both confidential employees and clerical employees represented by CSEA.

Representation History

While all classified employees are included in one bargaining unit and covered by a single collective bargaining agreement, CSEA has designated various groupings within the unit for purposes of representation on its bargaining team. ISD employees are included in the

"special services" grouping that includes construction planners and construction project facilitators, bilingual interpreters, the licensed vocational nurse, crossing guards, storekeepers and student attendance advisors.

Kathy O'Connor testified that she contacted CSEA representative Mark Cramer in September 1999 and asked how to go about getting an ISD employee on the bargaining team. She further testified that Mr. Cramer indicated he would get back to her with an answer but did not do so. Valerie Quenzer, who currently represents the special services group on the CSEA negotiations team, testified that in October 1999 she met with at least two ISD employees and answered questions concerning the process for getting a representative from that department on the negotiations team but is unaware of any further contact by the employees with CSEA toward obtaining such an internal change in representation.

Ms. Quenzer also testified that CSEA's local chapter holds regular monthly meetings, with notice provided both by hand-delivered and mailed notices. However, she acknowledged that Ms. O'Connor has contacted her at least once regarding problems with her receipt of such notices.

During the last reopener negotiations, the District made proposals for changes in the contract's provisions regarding professional growth. Agreement was reached by the District and CSEA to changes that allow more credit for professional growth hours by information services employees than the former language allowed.

The network technician, a recently created classification, received a five range increase in salary as a result of a classification study (the Ewing Study). The Ewing Study was district-wide in scope and took two years to complete.

The District/CSEA agreement allows CSEA to have a representative sit in on employee interviews for any position in pay range 36 or above. Out of 11 interviews for such positions

in the last two years for ISD positions, there were only five where CSEA sent a representative. During the same two-year period, there were 14 such interviews in the Maintenance and Operations Department with a 100-percent rate of representation.

ISSUE

1. Was the severance request in this matter properly filed?
2. If so, is the proposed unit an appropriate unit for purposes of meeting and negotiating pursuant to the EERA?

POSITIONS OF THE PARTIES

Petitioner

LISA asserts that the petitioned-for group shares a community of interest that is unique in the District. The employees share a common goal of providing an information infrastructure to the District; do not work directly with students; provide access to all critical information services, such as computers, enterprise software, network equipment, and telephones; have access to confidential information maintained in these systems; create and administer user accounts for electronic mail, Internet access, student information systems, school reporting records and District business systems; and have exclusive access to a locked and alarmed facility that houses the District's central business systems and communication equipment.

In addition, the employees have similar education and certification requirements that differ from those of other departments of the District, and employees are currently being hired into Information Systems from outside the District because current employees lack the requisite skills.

LISA contends that neither efficiency of operations nor representation history militate against approval of their proposed unit. Regarding efficiency of operations concerns, LISA notes that the District's representative testified that an additional bargaining unit would not create any additional burden for the District. LISA notes that, in addition to being included in a wall-to-wall unit, their classifications are grouped by CSEA with other "special services" employees, such as crossing guards, storekeepers and student attendance advisors, with whom they share no community of interest. LISA also notes that needed contract changes, in such areas as reclassification and professional growth, affecting their group came slowly. More importantly, it was the District, not CSEA, that proposed changes in the area of professional growth. Finally, LISA points to evidence that salaries for their classifications have not kept pace with other school districts, even though other CSEA-represented classifications have maintained salaries competitive with other employers.

Based on the demonstrated community of interest, the District's support for their petition, and bargaining history, LISA asks for approval of the proposed severance.

CSEA

CSEA first argues that LISA's petition should be dismissed as improperly filed, reiterating an argument first made in its April 11, 2000 letter. This argument relies on the requirements of service contained in PERB Regulation 32140 and Code of Civil Procedure section 1013(a). PERB Regulation 32140 provides that where service of a document is required the document must be accompanied by a "proof of service" declaration stating in relevant part that the person executing service and the proof of service declaration is "not a party to the within titled cause." Here, the individual signing the proof of service declaration accompanying the severance petition was Todd Hausauer. Mr. Hausauer is an employee of the District and his position would be included in the unit sought by LISA if the severance were

approved. CSEA further contends that Mr. Hausauer has supported the severance petition. CSEA therefore argues that the severance petition was filed "under fraudulent and deceptive means and clearly in violation of PERB rules and regulations," and thus should be dismissed.

CSEA next contends that the unit requested by LISA is not an appropriate unit under applicable PERB precedent. CSEA relies on Sweetwater Union High School District (1976) EERB Decision No. 4 (Sweetwater),⁵ in which the Board announced its preference for three units of classified employees: instructional aides; office-technical and business services; and operations and support services. CSEA further argues that, under Compton Unified School District (1979) PERB Decision No. 109 (Compton), PERB ruled that

a variant unit will not be awarded unless it is more appropriate than the Sweetwater unit based upon a separate and distinct community of interest among employees in the variant unit.

CSEA notes that the Board rejected a proposed separate unit of professional/technical employees in Sacramento City Unified School District (1977) EERB Decision No. 30, while favoring office/technical and business services units in several cases.

CSEA characterizes LISA's proposed unit as "unique and variant" because, in addition to failing to include all office/technical and business services employees, it includes only professional and technical employees in certain classifications while excluding other professional and technical employees of the District.

Regarding community of interest factors, CSEA asserts that the employees in the proposed unit do not have a unique line of supervision, are not alone in being required to have special certifications or upper level college education, and are not the only District employees who perform their job functions outside their assigned work location. In addition, CSEA notes

⁵ Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board (EERB).

that the information services employees are not the only District employees whose job functions do not relate to the provision of a proper physical environment for students, and they are not the only employees who deal with confidential information.

CSEA also points to health benefits, holidays, sick leave and other employee benefits that are common to these and other District employees, and regular interaction between the information services employees and other District employees in the course of their job performance.

With respect to representation history, CSEA argues that it has addressed the concerns of ISD employees whenever those concerns were brought to CSEA's attention. CSEA contends that, while negotiations over a comprehensive classification study took a long time, the results of the negotiations and study benefited information services employees, and that CSEA has also negotiated contract changes in other areas that benefit these employees.

Finally, while acknowledging there is no evidence in the record to show a detrimental effect on efficiency of operations of the District that would flow from approval of the requested unit, CSEA argues that approval of this "inappropriate" unit would cause dissension and fragmentation of employees.

For all the above reasons, CSEA asks that the instant request be dismissed.

District

The District disagrees with CSEA's contention that the LISA petition should be dismissed because an interested party signed the proof of service affidavit. The District notes that CSEA had actual notice of the filing and was able to fully participate in the case, including the formal hearing, and thus the question of whether LISA's proof of service affidavit complied with PERB regulations is not relevant.

The District also disputes CSEA's characterization of PERB precedent as requiring LISA to demonstrate its proposed unit is more appropriate than a Sweetwater unit. The District contends that, where a proposed unit is not in competition with a Sweetwater unit, "the variant unit need only be an appropriate unit."

The District supports approval of the proposed unit based on the covered employees' performance of highly technical, intellectual work involving independent thinking, and their unique job functions. The District argues the evidence supports finding that other District employees are not capable of performing the work of information services employees, noting that the last transfer into this area was approximately 18 months prior to the hearing. The employee who last transferred in testified to her belief that a similarly-situated employee would not qualify to transfer today due to substantial changes that have occurred in information services technology. The District's director of classified personnel also testified that recent transfer applicants were found to lack the skills to perform information services functions.

The District's position also relies on evidence concerning the education and training requirements that are applicable to information services employees, the fact that they are among the more highly compensated CSEA-represented employees, the difficulties of recruitment and retention experienced by the District for these employees, differing interests from other classified employees in the areas of overtime and flex schedules, and the degree to which information services employees are self-directed and work under minimal direct supervision. In addition, the lack of a shared community of interest with other classified employees is evidenced by conflicts in the areas of notice of shift change and professional growth. In sum, the District argues that these employees share a community of interest that is separate and distinct from other classified employees.

The District also contends that disputes between LISA and CSEA over the quality of representation afforded by CSEA are indicative of the lack of commonality between the information services employees and other classified employees. Finally, the District asserts that its operational efficiency will not be adversely affected by approval of the proposed unit.

DISCUSSION

Filing and Service of the Severance Request

CSEA argues that because an employee in the proposed unit executed service of the filing the request should be dismissed. Though CSEA cites no authority for this proposition other than the requirements set forth in PERB Regulation 32140, it is correct that the Board previously held, in Los Angeles Community College District (1983) PERB Decision No. 309, that it would not consider an appeal where service of the appeal was by other than a non-party and no copy was served on the opposing party.

As the District notes in its brief, CSEA's argument on this point fails to show any prejudice to CSEA's interests in this matter, as CSEA does not claim that the Petitioner failed to serve the initial request or any other document on CSEA. Under both Los Angeles Community College District, supra, PERB Decision No. 309 and Los Angeles Unified School District (1993) PERB Order No. Ad-250, CSEA must show more than a technical violation in order to prevail.

However, CSEA's position fails on this point on an even more fundamental basis. The petitioner in this matter is LISA. Todd Hausauer, an ISD employee, signed the proof of service. The record is bereft of any evidence that Mr. Hausauer has ever been designated by LISA as its authorized representative or that he has even self-designated himself as same. PERB Regulation 33015 defines the term "parties," for purposes of EERA-related matters, as including

the public school employer, the employee organization which is the exclusive representative of any employee covered by a request, intervention or petition, any employee organization known to have an interest in representing any employees as demonstrated by having filed a pending request or intervention, or any group of employees which has filed a pending petition pursuant to Section 34020 of these regulations or Government Code Section 3544.3.

Thus, as Mr. Hausauer is not a "party" as that term is defined by PERB regulations, CSEA's argument on this point is without merit. The motion to dismiss the severance petition as improperly filed is denied.

Unit Determination Criteria

In each unit determination case, the Board is bound to follow the criteria set forth in EERA at section 3545(a):

In each case where the appropriateness of the unit is an issue, the board shall decide the question on the basis of the community of interest between and among the employees and their established practices including, among other things, the extent to which such employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district.

In Sweetwater, the Board referenced the statement of legislative intent contained in EERA section 3540⁶ in holding that:

. . . Implicit in this statement of legislative intention is the notion that the employees will have the ability to choose an organization

⁶ The relevant portion of section 3540 quoted by the Board reads as follows:

It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by the organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit, . . .

which is an effective representative. An effective representative will generally be one largely determined by the community of interest and established practices of the employees rather than the efficient operation of the school district.

However, in the same decision, the Board also noted that

It is a legitimate concern that excessive fragmentation of negotiating units may burden an employer with multiple negotiating processes and postures and with a variety of negotiated agreements difficult to administer because their provisions differ.

The Board ruled early in its history that it must in each case determine the "appropriateness" of a unit without being limited only to a choice between "an" or the "most" appropriate unit, and must in each case weigh and balance the statutory criteria in order to achieve consistency of application and the general objectives of EERA. (Antioch Unified School District (1977) EERB Decision No. 37 (Antioch).)

In Sweetwater, the Board announced its preference for three units of classified employees: instructional aides; office-technical and business services; and operations and support services. The significance of the Sweetwater "preferred" units was further explained in Compton where the Board held that

a variant unit will not be awarded unless it is more appropriate than the Sweetwater unit based on a separate and distinct community of interest among employees in the variant unit or other section 3545(a) criteria. [Emphasis added; fn. omitted.]

The Sweetwater units were held in Antioch to

reflect a proper balance between the harmful effects on an employer of excessive unit fragmentation and the harmful effects on employees and the organizations attempting to represent them of an insufficiently divided negotiating unit or units.

More recently, in South Bay Union Elementary School District (1990) PERB Decision No. 816 (South Bay), the Board reiterated its preference for Sweetwater units, as well as its

disinclination to approve a wall-to-wall classified unit, when it reversed a decision finding a wall-to-wall classified unit appropriate for a small school district.⁷ Citing Shasta Union High School District (1977) EERB Decision No. 34 and Greenfield Union School District (1977) EERB Decision No. 35, the Board did not foreclose the possibility of ever finding a wall-to-wall unit appropriate but stated that such a finding could only be made "where there exists interchangeable functions and parallel working conditions consistent with the community of interest required to find a unit appropriate." (South Bay.) The Board rejected the proposed wall-to-wall unit in South Bay because the parties "failed to present evidence that interchangeable functions and parallel working conditions exist among the classified employees."

When a petition is filed to sever a presumptively appropriate Sweetwater unit from a larger, non-Sweetwater unit, the burden is on those opposing the severance to show that the established unit is more appropriate than the requested unit. (Livermore Valley Joint Unified School District (1981) PERB Decision No. 165 (Livermore); San Juan Unified School District (1995) PERB Decision No. 1082 (San Juan); Temple City Unified School District (1995) PERB Decision No. 1110.) Likewise, when a petition is filed to sever a smaller unit from a presumptively appropriate Sweetwater unit, the burden is on the petitioner to show that the requested unit is more appropriate. (Los Angeles Unified School District (1998) PERB Decision No. 1267.)

In this case, however, since the existing unit is not a Sweetwater unit, the standard against which the requested unit is judged shifts to whether the proposed unit is an appropriate

⁷The wall-to-wall unit favored by the hearing officer would have included only 37 employees.

unit. (Long Beach Community College District (1999) PERB Decision No. 1315 (Long Beach).)

Community of Interest

The record clearly supports the conclusion that the employees in ISD classifications share a community of interest. They perform similar duties and are engaged in common functions; they have similar education and training requirements; they work closely with one another; and they share common interests in the areas of compensation, benefits and working conditions.

However, while not required to demonstrate its proposed unit is more appropriate than a Sweetwater unit, it is still necessary for any party favoring establishment of a unit to show that it has a community of interest separate and distinct from other employees. In San Diego Unified School District (1981) PERB Decision No. 170 (San Diego), the Board rejected a proposed unit of hourly bus drivers, holding in part:

That the hourly drivers also have a community of interest among themselves need not be disproved but that does not end the inquiry into appropriateness of a unit. Every classification possesses a community of interest among its members. Janitors, undisputedly, have more in common with other janitors than they do with gardeners, but we have yet to find a separate unit of only janitors appropriate, absent unusual circumstances.

Here, the record falls short of persuasively demonstrating that ISD employees share a community of interest that is unique, or separate and distinct from other District classified employees. While their job duties and functions are distinguishable, their higher level education and training requirements are shared by several other classifications; performance of their duties necessarily involves frequent interaction with CSEA-represented employees in their own as well as other departments; their use of specialized equipment and requirement of special certifications is not unique in the District; the requirement that they travel from site to

site to perform their duties is a characteristic shared with several other classifications; and their job-related access to confidential information such as student, employee and medical records is not unique. Even the arguable need in the ISD for greater flexibility in the area of scheduling appears to be shared with Maintenance and Operations employees.

In addition, the employees in the proposed unit lack common supervision and even work in units with distinguishable functions in the context of District operations. While most of the ISD employees work in the area of Administrative Information Services and report through a supervisor to the ISD director and assistant superintendent for business services, not all are similarly placed. Several personal computer support technicians are in Instructional Information Services, reporting to a different supervisor and a different administrative director, who in turn reports to the associate superintendent for K-12 Schools and Educational Services. Further, these lines of supervision are not unique among classified employees.

In sum, while a case may be made at some future time in this District for either a Sweetwater office/technical unit, or a unit including all professional and technical employees, the petitioned-for unit at issue has not been shown to possess a separate and distinct community of interest necessary to a finding that it is an appropriate unit.

Negotiating History

The Board has recognized that negotiating history must be considered, along with other section 3545 criteria, as an important factor in evaluating a severance request. (Livermore.) However, the Board has also made it clear that where the existing wall-to-wall unit was established by voluntary agreement and its appropriateness was not fully litigated before PERB, the negotiating history will not be granted the same deference to which it might otherwise be entitled. (Livermore; Long Beach.)

The record here reflects that CSEA and the District have had a negotiating history for the established unit that spans nearly 25 years. While it may be true that neither the District or CSEA, nor the affected employees themselves, have always obtained their most desired result as promptly as they desire, the evidence does not support a finding that CSEA is hostile to the interests of ISD employees nor that the interests of ISD employees have prevented CSEA and the District from reaching agreements for the established unit.

Efficiency of Operations

Absent concrete evidence that a district's operational efficiency will be unduly impaired by an additional set of negotiations, operational efficiency will not be considered as a factor which militates against the establishment of another unit. (Livermore; San Juan; Temple City Unified School District (1995) PERB Decision No. 1110.)

As noted earlier, the Board has long noted the effects of excessive unit fragmentation on the employer as among the criteria that must be considered under EERA. However, here the District itself dismisses any potential negative effects of the severance and supports the request for a separate unit.⁸

CONCLUSION

Here, the issue presented is whether the proposed unit is an appropriate one; if it is, the severance request should be granted, and if it is not, the employees remain in a wall-to-wall unit. (Long Beach Community College District (1999) PERB Decision No. 1315.) As previously discussed, the unit proposed has not been shown to possess a separate and distinct

⁸ Notice is taken, nevertheless, that in PERB Case No. SA-SV-153-E, where a different petitioner seeks to carve out an even smaller unit of educational facility and planning services employees from this same classified unit, the District has opposed the severance, in part, due to concerns about excessive fragmentation and negative impact on its efficiency of operations.

community of interest necessary to finding it an appropriate unit. For this reason, and based on the entire record of this proceeding, the severance request is hereby DENIED.

Right of Appeal

Pursuant to PERB Regulation 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

In accordance with PERB Regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Regulation 32300.)

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Regulations 32135(a) and 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Regulation 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served

on a party or filed with the Board itself. (See Regulations 32300, 32305, 32140, and 32135(c).)

Les Chisholm
Regional Director